

## REMARKS

The Office Action of April 14, 2006 has been received and considered. Claims 3-7, 12-39 and 41-47 have been withdrawn pursuant to an election of species requirement. Reconsideration of the application in view of the following remarks, and allowance of the pending claims, is respectfully requested. Each of the Examiner's rejections is discussed below.

### Section 103

#### Claims 1 and 8-11

Claims 1 and 8-11 have been rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,247,249 to Lindqvist ("Lindqvist") in view of U.S. Patent No. 6,449,878 to Lyden ("Lyden"). Lyden is cited as disclosing a medial side of a sole element being thicker than the lateral side. This rejection is respectfully traversed.

Lindqvist discloses an article of footwear having an insert 11 that is placed inside an upper. Insert 11 includes a first support member 12/230 with a second member 36/232 extending downwardly from first support member 12/230.

Lyden discloses footwear with an upper 23 and a sole structure having a spring element 51 formed of superior spring element 47 and inferior spring element 50. Superior spring element 47 includes an anterior spring element 48 and a posterior spring element 49. Superior spring element 47 and inferior spring element 50 are typically connected to one another with fasteners 29. An anterior spacer 55 and posterior spacer 42 are positioned between anterior spring element 48 and posterior spring element 49.

The cited combination of Lindqvist and Lyden does not disclose or make obvious an article of footwear including an upper; and a sole structure secured to the upper, with the sole structure having an upper plate positioned adjacent the upper and extending longitudinally along

at least a portion of the upper; and a heel plate assembly secured at one end thereof to the upper plate, the heel plate assembly extending downwardly from the upper plate such that the heel plate assembly forms an acute angle with the upper plate, a medial side of the heel plate assembly having a thickness greater than a thickness of a lateral side of the heel plate assembly, the entire heel plate assembly being formed of a single material, as required by independent claim 1.

As noted above, Lindqvist discloses an insert 11 that is placed inside an upper of an article of footwear. It is not part of a sole structure having an upper plate and a heel plate and which is secured to an upper. Rather, it is expressly recited as being removable (col 1, lines 48-50).

Further, one of ordinary skill in the art would have no motivation or suggestion to modify Lindqvist such that insert 11 would be secured to the upper. The purpose of insert 11 of Lindqvist is to have a removable member that can be inserted in different footwear to provide support for the user's foot for different athletic activities. As specifically recited in Lindqvist, "active participation in varied sports requires varied shoes." (Col. 1, lines 32-33.) To secure insert 11 to the upper would defeat this objective of Lindqvist and, naturally, one skilled in the art would be taught away from such a modification.

Accordingly, the rejection is improper and should be withdrawn.

### **Claims 2 and 40**

Claims 2 and 40 have been rejected under 35 U.S.C. § 103(a) over Lindqvist and Lyden in view of U.S. Patent No. 6,092,314 to Rothbart ("Rothbart"). Rothbart is cited as disclosing a plurality of layers with varying widths as an alternative to a steady slope for a wedge shaped pad in footwear. This rejection is respectfully traversed.

Rothbart fails to overcome the deficiencies of Lindqvist and Lyden noted above. Specifically, Rothbart fails to disclose or make obvious an article of footwear including an upper; and a sole structure secured to the upper, with the sole structure having an upper plate and a heel plate assembly, as required by independent claim 1, from which claim 2 depends, and independent claim 40.

Rothbart discloses a wedge, labeled foot support system 60, which is positioned beneath the user's foot. Rothbart simply does not disclose the required sole structure secured to an upper. Accordingly, the rejection is improper and should be withdrawn.

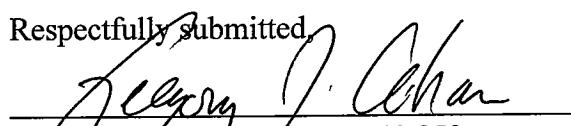
### **Conclusion**

Consequently, pending claims 1, 2, 8-11 and 40 are believed to be in form for allowance, and an indication to that effect is respectfully requested at this time. Examination of withdrawn claims 3-7, 12-39 and 41-47 is respectfully requested at this time. Please apply any charges or credits to Deposit Account No. 19-0733.

Dated:

June 15, 2006

Respectfully submitted,

  
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